IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

WP(C).No. 15878 of 2006(M)

PETITIONER:

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1. BELLA BENNY, W/O. LATE BENNY,
   RESIDING AT PULLAN HOUSE, KEERAMPARA P.O.,
   KEERAMPARA VILLAGE, KOTHAMANGALAM.
   (WIFE OF THE DECEASED).

2. GEORGEKUTTY BENNY,
   S/O. LATE BENNY, AGED 4 YEARS,
   RESIDING AT PULLAN HOUSE, KEERAMPARA P.O.,
   KEERAMPARA VILLAGE, KOTHAMANGALAM,
   REPRESENTED BY MOTHER AND LOCAL GUARDIAN
   BELLA BENNY.

3. THRESSIAMMA GEORGE, M/O. LATE BENNY
   RESIDING AT PULLAN HOUSE, KEERAMPARA P.O.,
   KEERAMPARA VILLAGE, KOTHAMANGALAM.
   (MOTHER OF THE DECEASED).

BY ADV. SMT.ANEY PAUL

RESPONDENTS:

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1. ALIAS MATHEW, S/O. MATHEW,
   MANALIKUDY HOUSE, IRINJOLE P.O.,
   PERUMBAVOOR.

2. BINISH T.P., S/O. PAULOSE,
   THUZHUTHINGAPARAMBIL HOUSE,
   RAYAMANGALA, KURUPPUMPADI.

3. THE BRANCH MANAGER,
   THE NATIONAL INSURANCE CO.LTD.,
   PERUMBAVOOR.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P (C0 15878/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT.P1: TRUE COPY OF AMENDMENT APPLICATION I.A. NO.1184/2006 IN O.P(MV) NO.854/2002 FILED BY THE PETITIONERS BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, MUVATTUPUZHA DATED 18.3.2006

EXHIBIT.P2: TRUE COPY OF ORDER DATED 17-4-2006 IN I.A. NO.1184/2006 IN O.P (MV) NO.854/2002 PASSED BY THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, MUVATTUPUZHA.

(TRUE COPY)

P.A. TO JUDGE.

M.N.KRISHNAN, J.

W.P. (C) No.15878 OF 2006

Dated this the 30th day of January, 2007

J U D G M E N T

This writ petition is filed challenging the order of the Motor Accidents Claims Tribunal, Muvattupuzha in I.A. No.1184/2002 in O.P. (MV) No.854/2002. An application for compensation was filed by the injured in respect of the injuries sustained to him in a road accident and he died during the pendency of the proceeding. Thereafter, his legal representatives have come on record and they have sought for amendment claiming enhanced compensation as if the death taken place on account of injuries sustained in the accident. If such claim is entertainable necessarily, the prayers incorporated in the amendment may have to be considered. It is not correct to arrive at a decision on that point even before allowing the amendment. Therefore, the order passed by the Tribunal is set aside and the amendment application is allowed. It is made clear that by virtue of amendment of the petition, it does not ipso facto follow that the claimants are entitled to

claim compensation as prayed for, they have to satisfy the tribunal including the question whether the death was on account of injuries sustained in the accident and whether the cause of action survives to the legal representatives as envisaged under the Act. It is also made clear that the contesting respondents are permitted to file additional counter statement with respect to their contentions. The writ petition is disposed of accordingly.

(M.N.KRISHNAN, JUDGE)

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M.N.KRISHNAN, J.

W.P. (C) No.15878 OF 2006

JUDGMENT

30th January, 2007